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1879

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 201.

JAMES F. MEGUIRE, PLAINTIFF IN ERROR,

vs.

DESSIE M. CORWINE AND QUINTON CORWINE, EXECUTRIX AND EXECUTOR OF RICHARD M. CORWINE, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 1, 1877.

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1 *Declaration.—Filed Sept. 28th, 1874.*

In the supreme court of the District of Columbia, this the 28th day of September, A. D. 1874.

JAMES F. MEGUIRE, PLAINTIFF,
vs.
RICHARD M. CORWINE, DEFENDANT. } At law. No. 13010.

The plaintiff sues the defendant, for that, on the 1st day of October, A. D. 1869, in consideration of the plaintiff's assistance to be rendered in procuring the defendant's appointment as special counsel for the United States in certain cases pending in the supreme court of the District of Columbia, holding a United States district court for said District, viz, No. 191. admiralty docket, in the matter of the bounty claim of Admiral D. G. Farragut and the officers and men of the Western Gulf squadron, and case No. 210, Farragut, David G., et al., vs. Ships Metropolis, &c., &c.; and also in consideration of the plaintiff's assistance in managing and carrying on the defense in the said cases, which was rendered in accordance with said agreement, the defendant promised to pay to the plaintiff one-half of all fees which should be received at any time by him as attorney in said cases. And the plaintiff avers that the defendant, as attorney aforesaid, received on account of the defense the sum of twenty-five thousand nine hundred and fifty ($25,950.00) dollars, one-half of which sum the defendant by the agreement aforesaid promised to pay the plaintiff—twelve thousand nine hundred and seventy-five ($12,975.00) dollars; yet the defendant, although often requested, has not paid the plaintiff the said sum, except as stated in the accompanying account.

2nd. For that, also, said defendant, on the 19th day of Novem-
2 ber, A. D. 1869, having been appointed special counsel of the United States in the two cases aforesaid, agreed with the plaintiff, in consideration of his assistance to be rendered in conducting the defense thereof, and in procuring the necessary testimony, agreed to pay to the plaintiff one-half of all fees and compensation which he, the said defendant, should at any time receive on account of his services in the cases aforesaid. And the plaintiff avers that he did render assistance to the defendant in accordance with the agreement aforesaid, and thereby became entitled to demand and have from the defendant one-half of all the fees received by him in said cases.

And the plaintiff avers that the defendant received as his fees in said cases twenty-five thousand nine hundred and fifty ($25,950.00) dollars, one-half of which is due to the plaintiff; yet, though often requested, the defendant has not paid the one-half of said sum, or any part thereof, except as stated in the accompanying account.

3rd. For that the said defendant being indebted to the plaintiff in the sum of twelve thousand nine hundred and seventy five ($12,975.00) dollars for work and labor done as attorney in the cases aforesaid, and for money had and received by the defendant for the use of the plaintiff, promised to pay the same when he should be requested; yet, although often requested, defendant has not paid the same, or any part thereof, except as stated in the accompanying account.

And the plaintiff claims the sum of eight thousand five hundred ($8,500.00) dollars, with interest from March 4th, 1874, according to the particulars of the demand hereunto annexed.

FRED. P. STANTON,
Attorney for Plaintiff.

3 The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof; otherwise judgment.

FRED. P. STANTON,
Attorney for Plaintiff.

Bill of particulars.

Richard M. Corwine, Dr., to James F. Meguire.

For one-half the fees received by you in the two Farragut admiralty cases, numbered on the docket of the supreme court of the District of Columbia, holding a United States district court for said District, viz, case No. 191, admiralty docket, in the matter of the bounty claims of Admiral D. G. Farragut and the officers and men of the Western Gulf squadron, and case No. 210, Farragut, David G., et al., vs. Ship Metropolis, &c., &c.

November 27th, 1869	$950 00
April 10th, 1871	$5,000 00
July 31st, 1873	$10,000 00
March 4th, 1874	$10,000 00
	$25,950 00
One-half of said amount being	$12,975

From which deduct amounts received by me from R. M. Corwine:

Cr. By December 1st, 1869	$475 00	
July 31st, 1873	$4,000 00	
		4,475
Balance due me		$8,500

DISTRICT OF COLUMBIA,
City of Washington, ss:

James F. Meguire, plaintiff in the above cause, makes oath that the cause of action set forth in the foregoing declaration is just and true, and that the aforesaid balance of eight thousand five hundred
4 ($8,500) dollars, exclusive of all set-offs and just grounds of defense, is justly due and owing to him from the defendant.

JAMES F. MEGUIRE.

Subscribed and sworn to before me Sept. 28th, 1874.

R. J. MEIGS, *Clerk*,
By JOB BARNARD,
Assistant Clerk.

Summons.—Issued Sept. 28th, 1874.

In the supreme court of the District of Columbia, the 28th day of September, 1874.

JAMES F. MEGUIRE, PLAINTIFF,
vs.
RICHARD M. CORWINE, DEFENDANT. } At law. No. 13012.

The President of the United States to the defendant, greeting:

You are hereby commanded to appear in this court on the first day

of its special term, occurring 20 days after service of this writ on you, to answer the plaintiff's suit, and show why he should not have judgment against you for the cause of action stated in this declaration.

Witness, D. K. Cartter, chief justice.

[SEAL OF COURT.]

R. J. MEIGS, *Clerk*,
By JOB BARNARD,
Assistant Clerk.

NOTE.—The special terms of the court commence on the first Tuesday of every month except August, in which month there is no term of the court.

(On back:)

Served copies of the declaration, affidavit, notice to plead, and this summons, on the defendant the 30th day of Sept., 1874.

ALEX. SHARP, *Marshal.*

Plea and affidavit.—Filed Oct. 9th, 1874.

In the supreme court of the District of Columbia, the 3rd day of October, 1874.

JAMES F. MEGUIRE, PLAINTIFF,
vs.
RICHARD M. CORWINE, DEFENDANT. } At law. No. 13012.

The defendant says he was never indebted as alleged.

The defendant says he did not promise as alleged.

Affidavit.

In the supreme court of the District of Columbia.

JAMES F. MEGUIRE
vs.
RICHARD M. CORWINE. } At law. No. 13012.

DISTRICT OF COLUMBIA, *ss:*

I, Richard M. Corwine, being first duly sworn, do depose and on my oath say, that I am the defendant in the above cause. I further swear that I am not indebted to said plaintiff on the ground alleged in his declaration herein, nor on any other ground, and I deny that he ever rendered any assistance whatever in procuring the appointment mentioned.

I further say that I have fully paid said plaintiff for all services rendered for me in or about said Farragut cases.

R. M. CORWINE.

Snbscribed and sworn to before me this 7th day of October, A. D. 1874.

E. F. M. FAEHTZ,
Notary Public.

6 *Joinder and note of issue.—Filed Oct. 12th, 1874.*

In the supreme court of the District of Columbia, the 12th day of October, 1874.

JAMES F. MEGUIRE
vs.
RICHARD M. CORWINE. } At law. No. 13012.

The plaintiff joins issue on the defendant's first and second pleas.

FRED. P. STANTON,
For Plaintiff.

Last pleading filed October 12th, 1874.

E. TOTTEN, *For Defendant.*

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court in and for said District, commencing the second Monday, eighth day of May, 1876.

MONDAY, *May 8th*, 1876.

By order of Humphreys, justice, one of the justices of the said supreme court, presiding, the court is opened by proclamation of the marshal, pursuant to rule of court.

JAMES F. MEGUIRE, PLAINTIFF,
vs.
RICHARD M. CORWINE, DEFENDANT. } At law. No. 13012. Cal., 86.

Now comes here Mr. Totten, attorney, and suggests the death of defendant, and the same is not denied.

7 MONDAY, *May 29th*, 1877.

Session resumed pursuant to adjournment; Humphreys, justice, presiding.

JAMES F. MEGUIRE, PLAINTIFF,
vs.
RICHARD M. CORWINE, DEFENDANT. } At law. No. 13012. Cal., 86.

Now comes here Mr. Totten, attorney for the executors, and says that defendant died leaving a will; that Dessie M. Corwine and Quinton Corwine have duly qualified as executors under the will of said decedent by the probate court of this District, and moves the court for leave to defend the said suit in the place of said deceased against the said plaintiff.

And thereupon it is ordered that the appearance of said Dessie M. Corwine and Quinton Corwine, as such executors, be, and the same is hereby, now made of record, that said suit stand revived in their names and be in the same plight and condition as when the defendant departed this life.

Amended plea.—Filed Oct. 26th, 1876.

In the supreme court of the District of Columbia.

JAMES F. MEGUIRE
vs.
CORWINE'S EXECUTORS. } At law. No. 13012.

For an amendment to the pleas of the defendant heretofor, pleaded, the

defendants say that after the alleged several promises in the said declaration mentioned, and before this suit, the said defendant, Richard M. Corwine, paid in cash to the said plaintiff the sum of $4,000 and
8 more, in full satisfaction and discharge of the alleged promises and undertakings, and of all the said sums of money in said declaration mentioned, and which said sums he, the said plaintiff, then and there accepted and received of and from said defendant in full satisfaction and discharge of the said several promises and undertakings and of all the sums of money in said declaration mentioned.

ENOCH TOTTEN,
Attorney for Defendant.

And for a further amendment he says that before the commencement of this suit the said R. M. Corwine fully paid the said claim in the declaration mentioned.

ENOCH TOTTEN,
Attorney for Defendant.

Joinder of issue on amended plea of defendants.—Filed Oct. 26th, 1876.

In the supreme court of the District of Columbia.

JAMES F. MEGUIRE, PLAINTIFF,
vs.
RICHARD M. CORWINE, DEFENDANT. } At law. No. 13012.

The plaintiff takes issue on the plea of satisfaction and accord.

FRED. P. STANTON,
Attorney for Plaintiff.

Proceedings before the supreme court of the district of Columbia, holding a special term and circuit court in and for said District, commencing the third Monday, 16th day of October, A. D. 1876.

9 MONDAY, *October 16th*, 1876.

By order of Chief Justice Cartter, one of the justices of said supreme court, presiding, the court is opened by proclamation of the marshal, pursuant to rule of court.

TUESDAY, *October 26th*, 1876.

Session resumed pursuant to adjournment; Chief Justice Cartter presiding.

JAMES F. MEGUIRE, PLAINTIFF,
vs.
DESSIE M. & QUINTON CORWINE, EXECUTORS of Richard M. Corwine, defendant. } At law. No. 13012. Cal., 72.

Now comes here as well the plaintiff, by his attorney, Mr. Stanton, as the defendants by their attorney, Mr. Totten, and a jury of good and lawful men of this district, to wit, Benjamin W. Keyser, Cornelius Clark, Jacob F. Staub, William Crawford, John J. Taylor, George A. Shekell, Nathaniel Berry, Thomas R. Burley, Charles Ruoff, Edgar Banks, Evan Lyons, jr., and Andrew C. Plant, who being duly sworn to try the issue above joined, are respited until the meeting of the court to-morrow.

FRIDAY, *October 27th*, 1876.

Session resume' pursuant to adjournment; Chief Justice Cartter. presiding.

JAMES F. MEGUIRE, PLAINTIFF,
vs.
DESSIE M. & QUINTON CORWINE, EXECUTORS of Richard M. Corwine, defendants. } At law. No. 13012. Cal., 72.

Now again come here the parties aforesaid in manner aforesaid, and the same jury that was respited yesterday, who, after the case is given them in charge, on their oath say they find the issue aforesaid
10 in favor of the defendant.

Therefore it is considered that the plaintiff take nothing by this suit, and that the defendants go thereof without day and recover against the plaintiff the cost of their defense, to be taxed by the clerk, and have execution thereof.

Motion for new trial on exceptions.—Filed October 31st, 1876.

In the supreme court of the District of Columbia, October 31st, 1876

JAMES F. MEGUIRE
vs.
THE EXECUTORS OF R. M. CORWINE. } At law. No. 13012.

The plaintiff moves for a new trial in this case on exceptions taken to the rulings of the court on the trial.

FRED. P. STANTON,
For the Plaintiff.

Bill of exceptions.—Filed Nov. 22nd, 1876.

In the supreme court of the District of Columbia, this day of November, 1876.

JAMES F. MEGUIRE, PLAINTIFF,
vs.
THE EXECUTORS OF RICHARD M. CORWINE, deceased, defendant. } At law. No. 13012.

Be it remembered that on the trial of this case, the plaintiff
11 offered to prove the contract alleged in the declaration by his own testimony, to which objection was made by the defendants.

The objection was sustained by the court, and the evidence of the plaintiff was excluded, to which the plaintiff excepted.

O. S. Lovell, a witness for the plaintiff, was then sworn, and testified as follows:

That in December, 1869, he met the plaintiff, who showed him the testator's check for $475.00, which he said the testator had paid him as one-half the retainer received from the government in the Farragut prize and bounty cases. Witness then went to the office of the testator, where he was going on business, and, in conversation on the subject of the Farragut cases, Corwine remarked that he had received his retainer of $1,000.00, less the revenue tax, and that he had paid the plaintiff one-half, $475.00. The testator also stated that he had agreed to pay the plaint-

iff one-half of all the fees he should receive in the said cases for his aid in getting the appointment of special counsel, and for the assistance which the plaintiff was to render in procuring testimony and giving information for the management of the defense in the said cases.

Witness further testified that the plaintiff was possessed of important information in reference to the captures made by Farragut at New Orleans; that plaintiff had been a clerk in New Orleans, in the office of Colonel Holabrid, chief quartermaster of the Department of the Gulf, during the war, and had possession of Colonel Holabrid's papers, from which he derived the facts communicated to the testator for the defense of the government in the said suits.

Witness further testified that he saw plaintiff at work in his office in Washington, making out lists and statements from said papers for the testator's use in the said defence. Afterwards, in 1871, he was in the testator's office in Washington, and saw the said lists and statements, in plaintiff's handwriting, in the possession of the testator. That the testator called his attention to them, and said it was for
12 such work as this that he had agreed to pay the plaintiff one-half of the fees to be received by him in the Farragut's cases.

On cross-examination, the witness said he knew, before his said conversation with R. M. Corwine, and before Corwine was employed, that Mr. Meguire, the plaintiff, had the selection of counsel in said cases, the Treasury Department only restricting him to the selection of a man who was familiar with admiralty practice, and Mr. Meguire was to utilize the information he professed to have at that time. The bargain, as witness understood it, was that in consideration of Meguire's procuring Corwine to be employed as special counsel in those cases, and of assisting him in getting evidence and information, Corwine agreed to pay to the plaintiff (Meguire) one-half of the fees which he (Corwine) might receive from the United States for services in said cases.

The plaintiff then called Lewis S. Wells, another witness in his behalf, who, being duly sworn, stated that since the commencement of this suit, he thought some time last year, he met the testator (R. M. Corwine, deceased) in the Treasury Department, and had a conversation with him about the plaintiff and the Farragut cases. Mr. Corwine was very angry, and said that he had agreed to pay Mr. Meguire one-half of his fees in the Farragut cases, and had paid him one-half the retainer received in 1869, and $4,000 in July, 1873, and had taken his receipt in full. That he had found out that plaintiff had not been the means of his appointment as special counsel, and he thought he had paid the plaintiff enough.

The witness also stated that the plaintiff had in his possession the papers of Colonel Holabrid, chief quartermaster of the Gulf, which contained important information in reference to the Farragut cases, and that he frequently saw the plaintiff examining the said papers and making out lists and statements for use in the defense of the government in the Farragut cases; that the impression he got from his
13 conversation with Corwine was, that he (Corwine) was to pay the plaintiff one-half of the fees for getting the appointment as special counsel in the prize cases, and without reference to any other services.

The plaintiff then called John H. Russell, who, being duly sworn, testified that some time in the winter of 1871, the testator wanted him, the witness, to go to New Orleans, for the purpose of getting up testimony in the Farragut cases, as the witness was a steamboat captain, and well acquainted in that city. He further testified that the testator (R. M. Corwine, deceased) said, in the course of the conversation, that the

plaintiff was assisting him in the preparation of the defense in the Farragut cases, and that he had agreed to pay the plaintiff one-half of his fees for his assistance.

Witness further stated that the testator had subsequently repeated the same thing to him in the Court of Claims at the Capitol.

The next witness called and sworn was Charles H. Stocking, who testified that, at the request of the plaintiff, he had delivered the two letters addressed by the plaintiff to the testator, one on the 4th of March, 1874, and the other on the 10th of March, 1874; that the first of said letters was delivered to Quinton Corwine, the son of the testator, who said that there was no answer; the second letter he delivered to the testator in person about the time of its date, and requested an answer. The testator said he would make no answer.

The letters were then read to the jury as follows, to wit:

[Frederic P. Stanton, attorney-at-law, No. 1303 F street.]

WASHINGTON, D. C., *March 4th*, 1874.

HON. R. M. CORWINE,
Attorney-at-Law:

DEAR SIR: I find the court in general term (on Monday last)
14 confirmed the award of the auditor of your fee for ten thousand ($10,000) dollars in the Farragut prize case.

This is to notify you that I claim the one-half of the fee aforesaid in accordance with our agreement; and, also, one thousand dollars in addition to the fee paid me by you last summer in the same case, as I find that you was paid ten thousand dollars instead of eight thousand dollars by the Treasury Department.

I hope this matter can be amicably settled.

Please answer and oblige.

Very respectfully,

J. F. MEGUIRE.

[Frederic P. Stanton, attorney-at-law, 1348 F street.]

WASHINGTON, D. C., *March 10th*, 1874.

R. M. CORWINE, Esq.,
Attorney-at-Law:

SIR: I deem it proper to advise you, that since the date of my letter on the 4th instance, I have ascertained, to my great surprise, that on the 10th day of April, 1871, you received an additional retainer in the Farragut cases of five thousand ($5,000) dollars, which was paid to you by Treasury draft No. 5292, on the assistant treasurer of the U. S. at N. Y., and of which I was wholly uninformed and entirely ignorant until yesterday. As you have not answered my letter of the 4th instance, I now take occasion to present this additional item in the account, which will stand as follows.

1st. Retainer received by you Nov. 27, 1869, $1,000, less tax, $950.
2nd. Additional retainer April 10, 1871, $5,000.
3rd. Additional fee July 31, 1873, $10,000.
15 4th. Final fee allowed by the court in general term in March, 1874, and paid you last week, $10,000.

Making a total fee received by you in the Farragut cases of twenty-five thousand nine hundred and fifty ($25,950) dollars, of which sum I claim one-half, according to your agreement with viz, twelve thousand nine hundred and seventy-five dollars ($12,975). From which sum de-

duct the following credit, viz: Amount paid to me December 1st, 1869 (the same being one-half of your first retainer), four hundred and seventy-five dollars ($475); amount paid me by you, July 31st, 1873, four thousand dollars ($4,000)—$4,475; leaving a balance due to me of eight thousand five hundred dollars ($8,500).

I demand your attention to this account which you are in honor bound to settle with me according to your agreement.

Respectfully,

J. F. MEGUIRE.

The plaintiff then offered in evidence certificates from the Treasury Department showing that the testator had been paid in the Farragut cases the amounts following at the dates stated, to wit:

1st, retainer Nov. 27, 1869, $1,000, less tax	$950
2nd, " April 10, 1871	$5,000
July 31st, 1873, additional fee	$10,000
The defendants admitted the receipt of an additional sum of $10,000 paid by order of the court on the day of March, 1874	$10,000
Making in all	$25,950

The plaintiff then read the deposition of E. C. Banfield, as follows:

That he resided in Washington, D. C., and held the offise of Solicitor of the Treasury of the United States from the middle of
16 April, 1869, to the last of May or June, 1874; that the plaintiff gave him the first knowledge he ever had of the institution of the Farragut prize and bounty suits. The plaintiff stated to him that he had a great deal of information relating to those matters, which was of importance to the government, and urged him to lay the matter before the Secretary of the Treasury with a view to having some one employed in the interest of the Treasury Department to contest the libels; and at that time plaintiff suggested to witness the name of the testator as a lawyer of experience and skill fitting him to take charge of the cases; and plaintiff also stated that if the testator was employed by the Secretary of the Treasury, the plaintiff would give the testator the benefit of all the information he possessed in relation to those cases.

That soon after this interview with the plaintiff witness presented the subject of these suits to the Secretary of the Treasury, and gave to him all the information in reference thereto which had been given to him by plaintiff. That the Secretary was satisfied there was a necessity of employing counsel, and asked witness who he would recommend to be employed. Witness replied the plaintiff had recommended the testator, but that the testator was a stranger to witness, and he was not prepared to recommend the testator to the Secretary. Witness suggested to the Secretary to make inquiry himself as to who would be a suitable person to employ in those cases, and in a few days afterwards the Secretary told witness he was satisfied to employ the testator, and directed witness to retain the testator accordingly in those cases.

Witness further testified that plaintiff did recommend the testator in the Farragut cases, and that the testator's name had not been mentioned to him in connection with said cases previous to the recommendation of the plaintiff; and that through the agency of the plaintiff, investigations were made in the records of the Treasury Department, and evidence and information thereby obtained which was to be turned over to the defendant and used by him in the defense of those cases.

17 The defendant then read to the jury the plaintiff's receipts of July 31st, 1873, in the following words, the body of which was admitted to be in the handwriting of the testator, and the signature of the plaintiff.

Received of R. M. Corwine four thousand dollars, which with the sum heretofore paid me by him is in full for all the services I rendered said Corwine in the way of collecting evidence and performing other duties for him as the attorney of the United States in the cases known as the Farragut prize and bounty cases, and I hereby acknowledge and certify that I have no other or further claim against said Corwine, and take the above sum in full satisfaccction and discharge. July 31st, 1873.

J. F. MEGUIRE.

And also read from the records of this court relating to the "Farragut prize and bounty cases," entries of the proceedings as follows:

1873, March 26.—Award of arbitrators.
" " 29.—Decree supreme court, D. C., by Justice Humphreys, confirming the award of arbitrators.
" " 31.—Appeal to general term.
" April.—Award affirmed by general term.
" " 19.—Appeal to Supreme Court U. S.

And also read from the same record an extract showing that the plaintiff on the 23rd of September, 1872, was admitted to the bar with the other students of the Columbia College Law School.

The plaintiff, in rebuttal, called William Blackford, a witness in his behalf, who, being duly sworn, testified that he was present when the receipt was given by the plaintiff. The money was paid to the plaintiff by Quinton Corwine, the son of the testator. And the plaintiff then offered to prove by the witness that the said Quinton Corwine stated, at the time of paying the said sum of $4,000, that that sum, and the other sum of $475,00, previously paid, were one-half of all the
18 fees that had been received by the testator in the said Farragut cases.

This testimony the defendants objected to. The court sustained the objection, and excluded the testimony, to which the plaintiff excepted.

The plaintiff offered to prove, by his own testimony, that the testator (R. M. Corwine, deceased) told him that the sum of $475.00 and $4,000 paid to him were one-half of all the fees which he had received, or expected to receive, in the said cases, and that the said receipt was signed and executed by the plaintiff in consequence of the said statement of the testator, and in ignorance of the fact that the testator had received the sums aforesaid which had been paid to him as fees, and in ignorance of the fact that he claimed any further allowance, and was to be paid the additional sum of $10,000, which was afterwards paid by order of the court.

To this testimony of the plaintiff, himself as witness, the defendants objected, and the court sustained the objection, and excluded the testimony, on the ground that the suit was against executors, to which the plaintiff excepted.

The evidence being closed, the court charged the jury that the contract set out in the first count of the declaration was illegal and void, and that the plaintiff could not recover on the second count unless the jury should find that the parties made another and distinct contract; to this charge the plaintiff excepted.

The plaintiff then asked the court to charge the jury as follows:

"If the plaintiff caused to be presented to the testator the letters of

the 4th and 10th of March, 1874, which have been read in evidence, and the testator made no reply to them, the jury may infer that the facts stated in those letters were admitted by the testator and could not be denied by him. But, such inference is a question for the jury alone, to be derived from all the circumstances of the case, a'd the conduct and language of the parties at the delivery of the said letters."

The court refused to grant this prayer, and the plaintiff excepted to this ruling of the court.

19 The court granted the first and second prayers of the plaintiff as follows, to which the defendants excepted:

1st. If any amount of money was due to the plaintiff from the testator, and the plaintiff agreed to accept a smaller sum in satisfaction of the whole, that agreement is no obstacle to the collection of the balance, unless the plaintiff received some other advantage sufficient to form a consideration for forbearing to collect the unpaid part of the debt. Payment of part of a debt is not a satisfaction of the whole, considered either as payment or as an accord and satisfaction.

2nd. If the plaintiff was misled or deceived by the testator a' to the amount of fees received by him, or if the testator concealed the said amount from the *testator*, and the plaintiff acted in ignorance of the facts, and without a full knowledge of his rights, then plaintiff's receipt of July 31st, 1873, is no bar to the recovery of the full amount which he was entitled to claim from the testator.

The court granted the following four (4) prayers asked for by the defendants, but as qualified by the first and second prayers granted to the plaintiff, to all of which the plaintiff excepted.

1st. If the jury shall find from the evidence that the plaintiff, in October, 1869, made an agreement with the testator, R. M. Corwine, deceased, that he would procure and induce the Secretary of the Treasury of the United States to retain and employ the said R. M. Corwine as special counsel for the United States, to defend and protect the interests of the United States in two certain cases, then pending in the supreme court of the District of Columbia, in admiralty, and commonly known as "Farragut prize cases," and in the event of such employment would assist said Corwine to procure evidence and information to aid in the defense of such suits, and in consideration of the procuring of said Corwine to be so retained and employed, and of such assistance in procuring evidence, said Corwine agreed, on his part, that he would pay to said plaintiff one-half of whatsoever fee, or fees, said Corwine might receive for his professional services in such cases, the ver-

20 dict must be for the defendants. Such an agreement is void, because it is contrary to public policy, and the plaintiff cannot recover in any form of action for any services rendered or labor performed in pursuance thereof.

2nd. If the jury find from the evidence that the plaintiff agreed to procure the appointment of the testator, R. M. Corwine, by the Secretary of the U. S. Treasury, as special counsel to defend and protect the interests of the United States in the "Farragut prize cases," then pending in the supreme court of the District of Columbia, and that said Corwine, on his part, agreed, in consideration of such procurement, to pay the plaintiff one-half of all the fees he might receive in such cases, such contract was void, and the verdict must be for the defendants.

3rd. If the jury shall find from the evidence that after the testator, R. M. Corwine, had been employed by the Secretary of the Treasury of the United States as special counsel to defend the United States in the "Farragut prize cases," and after all the evidence therein had been

taken and submitted, and decreed rendered in the supreme court of the District of Columbia, from which appeals had been taken to the Supreme Court of the United States, the plaintiff and said R. M. Corwine voluntarily came together and made a settlement for the work and labor, and all the duties performed by the said plaintiff in and about said cases, in consequence of which settlement the said R. M. Corwine paid the said plaintiff in cash the sum of $4,000.00, and that the plaintiff, at the time of such payment, signed a paper writing, or receipt, and delivered the same to said Corwine in the words and figures following, to wit (here copy the receipt of 31st July, 1873): the verdict of the jury must be for the defendant.

4th. If the jury find from the evidence, after the said testator, R. M. Corwine, deceased, had been employed and for a long time engaged in defending the said "Farragut prize cases," and after the plaintiff had performed and rendered all his services in procuring evidence and information, a dispute existed between the plaintiff and said R. M.
21 Corwine as to the amount of compensation which said plaintiff was entitled to have from the said R. M. Corwine, and that said parties came together and agreed to and did settle the whole matter by the payment by said Corwine to the plaintiff of the sum of $4,000, to be received by said plaintiff in full satisfaction and discharge of all claims for such services, and that said plaintiff actually received said sum of $4,000 from said Corwine in pursuance of such settlement, the verdict must be for the defendant.

And the plaintiff presents this his bills of exceptions, and prays it may be signed, sealed, and made part of the record, which is accordingly done. November 22nd, 1876.

[SEAL.]

D. K. CARTTER,
Chief Justice.

Proceedings before the supreme court of the District of Columbia, in general term, commencing Monday, April 16th, 1877. Present, Justices Olin, Wylie, Humphreys, and MacArthur.

MONDAY, *June 11th*, 1877.

Session resumed pursuant to adjournment.
Present, Justices Olin, Wylie, Humphreys, and MacArthur.

JAMES F. MEGUIRE, PLAINTIFF,
vs.
DESSIE M. CORWINE & QUINTON CORWINE, executors of Richard M. Corwine, defendants. } At law. No. 13012.

And now again comes here as well the plaintiff as the defendants, by their respective attorneys, and because it appears to the court that there is no error in the record and proceedings of the circuit court nor in its judgment, therefore it is considered that the said judgment of the
22 circuit court be, and the same is hereby, affirmed, with costs, the plaintiffs' motion for a new trial upon exceptions to the rulings of the said circuit court notwithstanding, and that the defendant have execution for the cost of his defense, to be taxed by the clerk.

23 In the supreme court of the District of Columbia, the 18th day of June, 1877.

JAMES F. MEGUIRE, PLAINTIFF,
vs.
QUINTON CORWINE, EXECUTOR, AND DESSIE M. Corwine, executrix of Richard M. Corwine, dec'd, def'ts.
At law. No. 13012.
In error.

Know all men by these presents that we, James F. Meguire and Fred. P. Stanton, are bound unto the above-named defendants in the sum of two hundred ($200.00) dollars, to be paid to the said defendants, their executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 18th day of June, 1877.

Whereas the above plaintiff has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named James F. Meguire shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

J. F. MEGUIRE. [SEAL.]
FRED. P. STANTON. [SEAL.]

Sealed and delivered in presence of—
R. J. MEIGS, Jr.

Approved June 19, 1877.

D. C. HUMPHREYS, *Justice.*

24 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between James F. Meguire, plaintiff, and Dessie M. Corwine and Quinton Corwine, executors of Richard M. Corwine, defendants, at law, No. 13012, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: Therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said supreme court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, this 19th day of June, in the year of our Lord 1877, and of the Independence of the United States the 101st.

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To Dessie M. Corwine & Quinton Corwine, executors of Richard M. Corwine:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein James F. Meguire is plaintiff and you are defendants, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness A. B. Olin, one of the justices of the said supreme court of the District of Columbia.

A. B. OLIN, *Justice.*
D. K. CARTTER, *Cheif Justice.*

Service of the above acknowledged this 24th of July, 1877.

ENOCH TOTTEN,
For Appellees.

25 CLERK'S OFFICE,
Supreme Court of the District of Columbia, ss:

I, Return J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 9th day of August, A. D. 1877.

R. J. MEIGS, *Clerk,*
By J. JAY CAMP,
Ass't Clerk.

(Indorsement on cover:) No. 201. James F. Meguire, plaintiff in error, vs. Dessie M. & Quinton Corwine, exo'rs of Richard M. Corwine, dec'd. Dist. of Columbia sup. court. Filed 1st October, 1877.

Supreme Court of the United States.

OCTOBER TERM, 1879.

JAMES F. MEGUIRE, PLAINTIFF IN ERROR,

vs.

DESSIE M. CORWINE AND QUINTON CORWINE,
EXECUTRIX AND EXECUTOR OF RICHARD M. CORWINE, DEC'D.

No. 210.

BRIEF OF THE PLAINTIFF IN ERROR.

This was an action at law in the Supreme Court of the District of Columbia, brought in the lifetime of Corwine, for a balance of $8,500 on an account. The declaration, in the first count, sets out a contract by which Corwine, in consideration of the plaintiff's assistance to be rendered in procuring the defendant's appointment as special counsel for the United States in the well-known Farragut cases, then pending in Admiralty in said court, and also in consideration of his assistance in the defense of said cases, which was duly rendered, the defendant promised to pay the plaintiff one-half of all the fees he should at any time receive as attorney in said cases. The defendant received $25,950 as fees in said cases, but paid the plaintiff only $4,475.

The 2d count alleges the promise to pay the plaintiff one-half the fees for his assistance in the defense of the cases, which assistance was faithfully rendered according to the contract. The 3d count is for work and labor done in said cases and for money had and received, &c.

The defendant plead *nil debit* and *non assumpsit*; and afterwards amended by filing pleas of "accord and satisfaction" any payment.

Issue was taken on all these pleas.

The charge of the justice presiding at the trial was such that the jury were compelled to find a verdict for the defendant. A bill of exceptions was filed which sets out all the testimony received and rejected, the charges of the judge and all the incidents of the trial.

At page 9 of the transcript it is proved that the testator received the amount of fees stated, $25,950. There was no dispute about this fact.

The contract is proved by the witnesses, Lovell, Wells, Russell and Bamfield. Pages 6, 7, 8, 9. From all these witnesses we learn that the plaintiff had important information, and peculiar advantages for making the defense of the Government in the suits aforesaid, which the officers of the Treasury desired to make available on the trial. The question was what vessels or other property were lawful prizes on the capture of New Orleans. This involved a knowledge of what portion of such property had been in the employment of the quartermaster's department and of the sources of testimony on that subject; and of this character was the information possessed and used by the plaintiff.

Lovel testifies that the testator stated to him that "he had agreed to pay the plaintiff one-half of all the fees he should receive in the said cases for his aid in getting the appointment of special counsel, and for the assistance which the plaintiff was to render in procuring testimony and giving information for the management of the defense in said cases." Then, after stating the important information possessed by the plaintiff, and his diligence in preferring lists and statements for the testator's use, he further testifies that "afterwards, in 1871, he was in the testator's office in Washington and saw the said lists and statements in plaintiff's handwriting, in the possession of the testator. That the testator called his attention to them and said it was for such work as this that he had agreed to pay the plaintiff one-half of the fees to be received by him in the Farragut cases."

John H. Russell testifies that the deceased proposed to him to go to New Orleans to get certain testimony and, in the

conversation, said "that the plaintiff was assisting him in the course of the preparation of the defense in the Farragut cases, and that he had agreed to pay the plaintiff one-half of his fees for his assistance."

The defendant produced the plaintiff's receipt in full, dated the 31st of July, 1873. Transcript, p. 10. This was admitted to be in the testator's handwriting and signed by the plaintiff It was sent to the plaintiff by the testator's son, Quinton Corwine, who paid the $4,000 and procured the plaintiff's signature to the receipt. The plaintiff offered to prove by the witness, William Blackford, that at the time of paying this money and taking said receipt, the said Quinton Corwine told the plaintiff that the said sum of $4,000, and the sum of $475, previously paid, were one-half of all the fees that had been received by the testator in the Farragut cases. The defendant objected to this testimony and it was excluded by the court. The plaintiff excepted to this ruling.

The plaintiff then offered to prove by his own testimony, that the testator told him that the sums of $475 and $4,000 paid to him, were one-half of all the fees he had received, or expected to receive in said cases, and that the said receipt was signed and executed by him in consequence of the said statement of the testator, and in ignorance of the fact that he had received the large sums proved in the case. The defendant objected to this testimony, and it was rejected by the court on the ground that the suit was against executors. The plaintiff also excepted to this ruling.

The plaintiff's testimony in other material matters was rejected by the court on the same ground, and exception taken.

The letters of the plaintiff of the 4th and 10th of March, 1874, to the defendant were proved to have been delivered to the latter by the witness, Charles H. Stocking. To these letters the defendant declined to make any reply.

Assignment of Errors.

The exceptions on which the plaintiff relies for the new trial which was refused him by the court below, are—

1. The exclusion of the plaintiff's own testimony, as a witness, on the ground that the suit was against executors.

2. The exclusion of Blackford's testimony offered by the plaintiff, to prove the statements made by Quinton Corwine, at the time he paid the sum of $4,000, and took the plaintiff's receipt in full, the said statements being explanatory of the transaction and made during its progress.

3. To the charge of the court (p. 10) "that the contract set out in the 1st count of the declaration was illegal and void, and that the plaintiff could not recover on the 2d count, unless the jury should find that the parties made another and distinct contract."

4. To the refusal of the court to charge as requested by the plaintiff, (p. 10, 11) in reference to the letters of the plaintiff to the defendant, and the refusal of the latter to answer the same.

5. To all the four prayers of the defendant, (pp. 11 to 14) which were allowed by the court and given in charge to the jury.

Argument.

1. The exclusion of the plaintiff's own testimony-in-chief and in rebuttal. The decision of the court on this point, was founded on the law of the United States, as laid down in section 858 of the Revised Statutes, which evidently applies only to the courts established under the Constitution in the States. This law contains an exception in favor of executors and administrators.

But there is a special law for the District of Columbia which contains no such exception, but allows parties to testify in their own behalf in all cases whatever, except in criminal cases and in certain cases involving the relations of husband and wife. Revised Statutes relating to the District of Columbia, sections 876, 877.

The originals of both these laws were passed on the same day, July 2, 1864; but the general law first mentioned was contained in chapter 210, while the law for the District of Columbia was in chapter 222. The former was afterwards amended by the act of 1865, chapter 113; and these, together with the 1st section of the act of July 16, 1862, chapter 189,

are all compiled together in section 858 of the General Revised Statutes, so as to indicate their applicability only to the federal courts in the States.

2. If the foregoing position be correct, then there was palpable error in excluding the plaintiff from testifying in his own behalf as to the statements of the testator which induced him to execute the receipt of July 31, 1873.

But it was equally fatal to exclude the testimony of Blackford as to the statements of Quinton Corwine when he paid the $4,000 and exacted the receipt. This young man, son and law partner of the testator, was the agent of his father when he brought this money and the previously-prepared receipt to the plaintiff. It was in the very act of closing this transaction that he made the false statement to the effect that the sum about to be paid was one-half of all the fees which had been received by the testator. What he said in the execution of his agency and in reference to the subject-matter, was admissible in evidence against his principal.

1st Greenleaf's Evidence.

American Fur Co. *vs.* United States, 2 Pet., 358.

3. The refusal of the court to charge the jury as requested by the plaintiff in reference to testator's refusal to reply to the letters of the 4th and 10th of March, 1874, was erroneous. Either the delivery of those letters ought not to have been allowed in proof, or the court ought to have instructed the jury as to their effect. It was only reasonable to ask the charge that, from the testator's refusal to answer, "the jury may infer that the facts stated in those letters were admitted and could not be denied; but such inference is a question for the jury alone, to be derived from all the circumstances of the case and the conduct and language of the parties at the delivery of said letters."

4. In the charge of the court, p. 10, the jury were instructed that "the contract set out in the 1st count of the declaration was illegal and void, and that the plaintiff could not recover on the 2d count, unless the jury should find that the parties made

another and distinct contract." And in the 1st instruction asked by the defendants and given by the court, p. 11, the jury were told, "such an agreement is void, because it is contrary to public policy, and the plaintiff cannot recover in any form of action for any services rendered or labor performed in pursuance thereof."

There can be no doubt that this charge was fatal to the plaintiff's whole case. The jury were not allowed to infer, as they might well have done from the testimony of more than one of the witnesses, that the testator after his appointment as special counsel, recognized an implied agreement to pay the plaintiff one-half his fees for the services of the latter rendered during the progress of the business. In fact, he did make this statement to the witnesses; and, moreover, he actually did pretend to pay one-half of his receipts, stating that it was for the plaintiff's aid in carrying on the defence. If the judge at the trial had not given the sweeping charge as quoted, the verdict might, and probably would have been for the plaintiff.

Bank of Washington *vs.* Triplet, 1 P., 31:

In this case the court says: "The first prayer * * * being to instruct the jury that, upon the whole evidence, the plaintiff ought not to recover, if it might properly have been granted in any case in which testimony was offered, certainly ought not to have been granted, if any possible construction of that testimony would support the action."

But it is not admitted that the contract set out in the 1st count of the declaration was contrary to public policy, illegal, and void. There was not a single feature in it of concealment, or fraud, or wrong, nor anything whatever that could possibly work injury to the public interests.

The contract, thus stigmatized as bad and void, was briefly this:

The plaintiff having peculiar knowledge and unusual facilities for making a proper defence in the Farragut cases, proffered to make this information useful to the Government by assisting such attorney as might be appointed, looking to said attorney for his own compensation. Frankly making this proposition and concealing nothing from the Government, he suggested

the appointment of the testator, Mr. Corwine, and made an agreement with him that in the event of his appointment he would aid him in the defence of the cases by all the information in his possession, in consideration that Corwine would pay him one-half of all the fees to be received by him. It is stated by one of the witness "that the plaintiff had the selection of counsel in said cases, the Treasury Department only restricting him to the selection of a man who was familiar with admiralty practice." Lovel, p. 7. This no doubt is an overstatement of the facts; but it seems to be clear from the testimony of the Solicitor of the Treasury that the department appreciated the value of the plaintiff's information, and was anxious to secure the benefit of it to the Government. In all probability the agreement between the plaintiff and Corwine was known to the department. The contract was caaried out fully by the plaintiff, and partially by the intestate, until the latter sought, by concealment and misrepresentation, to evade his part of the obligation.

This contract, it is insisted, was not contrary to public policy. It does not fall within the principle of any of the cases which have been cited to condemn it; for in all those cases, what is condemned by the courts, are "influences secretly urged under false and covert pretences, which must necessarily operate deleteriously on legislative action."

Marshall *vs.* B. & O. R. R. Co., 16 How., 314.

In the same case, the court designating how parties may legally seek to influence the Government, says: "they shall honestly appear in their true character, so that their arguments and representations, openly and candidly made, may receive their just weight and consideration." P. 334.

In Trist *vs.* Childs, 21 Wall., 441, after pronouncing an agreement for purely professional services valid, the Court adds, (p. 451), "the agreement in the present case was for the sale and the influence of the lobby agent to bring about the passage of a law for the payment of a private claim without reference to its merits," &c.

In Marshall *vs.* B. & O. R. R. Co., the court had said: "The law annuls every contract for procuring the appointment or election of any person to office;" and in Trist *vs.* Childs, the court, in support of this principle, refers to Gray *vs.* Hook, 4 Comstock, 449. In this case both Gray and Hook had been applicants for the appointment, and the illegal agreement is thus stated: "Hook was to withdraw his application which he had already made, and aid Gray in procuring his, not for a fixed and certain consideration merely, but he was to have one-half of the fees and emoluments of the office as long as Gray should hold it. Thus stipulating for a dangerous influence over a profitable office which was not entrusted to him, and for the performance of the duties of which he was under no pecuniary or legal obligation."

Providence Tool Co. *vs.* Norris, 2 Wall., 45: In this case there was an arrangement to pay an agent for procuring a public contract, all that he could get over a certain stipulated price. The court pronounced this contract void, and very justly said: "All contracts for supplies should be made with those only, who will execute them most faithfully and at the least expense to the Government."

The difference between all these cases, and that now under consideration, seems to be very clear and well defined. The present plaintiff, in view of all the facts, so well known to the Government, virtually stipulated for the rendering of his own services in the defence of the Farragut cases, when he procured the appointment of the testator. He was to assist Mr. Corwine, and look to him alone for his compensation.

There was no concealment or fraud. His proceedings were open and manly, and so far from tending to injure the Government, they actually promoted its interests. The employment of the testator was not an appointment to office; he could not have claimed more than the Government and the court were disposed to allow him for his services, including the assistance of the plaintiff: and it was not in the power of the plaintiff to influence this allowance in any way whatever. In fact, he was ignorant of the amount allowed, until about the time he brought his suit.

5. But admitting, for argument, that the contract as originally made was illegal, and that the plaintiff cannot recover on the second count, by virtue of a subsequent implied contract to pay for the assistance rendered, as frequently admitted by the testator himself, the plaintiff is still entitled to recover on the third count for his part of the money actually received by the testator through the final accomplishment of the supposed illegal contract.

If there was a violation of public policy, by a void and illegal contract, the testator was equally involved with the plaintiff in the wrong; and after the end sought has been accomplished and the fruits secured, it is not allowed that one of the guilty parties shall appropriate the whole fund to his own individual use.

Planters' Bank *vs.* Union Bank, 16 Wall., 483.
Lestapies *vs.* Ingraham, 5 Pa. St. Rep. (Barr), 71.
McBlair *vs.* Gibbs, 17 How., 232, and cases cited.
Brook *vs.* Martin, 2 Wall., 70, and cases cited.

In the case in 16 Wall., this principle is announced: "But when the illegal transaction has been consummated; when no court has been called upon to give its aid to it; when the proceeds of the sale have been been actually received, and received in that which the law reoognizes as having value, and when they have been carried to the credit of the plaintiff, the case is different. The court is not then asked to enforce an illegal contract. * * * Some of the authorities show that though an illegal contract will not be executed, yet when it has been executed by the parties themselves, and the illegal object of it has been accomplished, the money or thing which was the price of it may be a legal consideration between the parties for a promise, express or implied, and the court will not unravel the transaction to discover its origin."

FRED. P. STANTON,
Attorney for Plaintiff.

IN THE

Supreme Court of the United States.

No. 201.—October Term, 1879.

JAMES F. MEGUIRE, Plaintiff in Error,

vs.

QUINTON CORWINE ET AL., Executors, &c.,
Defendants in Error.

BRIEF FOR DEFENDANTS IN ERROR.

ENOCH TOTTEN,

Counsel for Defts. in Error.

J. L. Pearson, Printer, 9th and D sts., Washington.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1879.

JAMES F. MEGUIRE, Plaintiff in Error,
vs.
QUINTON CORWINE ET AL., EXECUTORS, &c., Defendants in Error.
No. 201.

Brief for Defendants in Error.

This is a writ of error to the Supreme Court of the District of Columbia.

STATEMENT OF THE CASE.

The declaration in this cause contains three counts:

The first count avers that on the 1st day of October, 1869, in consideration of assistance to be rendered by the plaintiff in procuring the defendant to be appointed as special counsel of the United States in certain cases pending in the Supreme Court of the District of Columbia, and known as the "Farragut Prize Cases," and also in consideration of the plaintiff's assistance in managing the defence in said cases, the defendant's testator promised to pay the plaintiff one-half of all the fees which might be received by him as attorney in said cases.

The second count sets out a different agreement, of the date of the 19th of November, 1869, and proceeds upon the theory that the defendants' testator, having been appointed special counsel in the said prize cases, in consideration of the plaintiff's assistance to be rendered in conducting the defence therein and in procuring the necessary testimony, he, the defendant's testator, agreed to pay the plaintiff one-half of all the fees that he might receive from the United States therein. The plaintiff avers that Corwine received the sum of $25,950.

The third count is the ordinary count in *indebitatus assumpsit*.

At the trial of the cause the plaintiff offered evidence for the purpose of establishing that in October, 1869, he possessed papers belonging to Colonel Holabird, who had been chief quartermaster of the Department of the Gulf during the late war, and that by reason of the possession of the said papers he knew a great many things in regard to the said prize cases then pending in the court below, which would be of advantage to the attorney conducting the defence, and also that he had the power or the privilege, in some way accorded to him by the Executive Department of the government of the United States, of selecting counsel to be employed by the Secretary of the Treasury, to defend the interests of the government in those cases; that Mr. Corwine, deceased, agreed with the plaintiff that in consideration of his favoring him (Corwine) by selecting him as such counsel to defend the interests of the United States, he would pay to the plaintiff one-half of the fees which he might receive; and that in addition to the bargain made to procure the appointment of Corwine, that the plaintiff agreed to assist in conducting the defence by utilizing this secret information which he claimed to possess at that time. One of the witnesses testified that the agreement on the part of Corwine proceeded exclusively upon the consideration of the procuration of the appointment of Corwine as such assistant counsel.

It is conceded that the plaintiff did render some services to Mr. Corwine in conducting the defence in those cases; but it is insisted, in behalf of the appellees, that this agreement with the plaintiff was a special, honest agreement, and that, after the services were rendered by the plaintiff for the deceased, and after the evidence had all been submitted, and after the causes had been brought to this court on appeal, the parties came together and had a final settlement—an accord and satisfaction—and that on the 31st day of July, 1873, the plaintiff executed and delivered to Corwine a final discharge from all responsibility growing out of such employment; and that at the time of the execution and delivery of that paper, which is set out in the record, Mr. Corwine paid him the sum of $4,000 in cash. That paper refers to the money previously paid by Corwine to the plaintiff for services rendered in the cases, and the plaintiff therein declares and acknowledges that he has no other or further claim against said Corwine, and that he receives the money therein specified in full satisfaction. There is no averment anywhere in this case that this paper was procured by fraud or through mistake or misapprehension.

Argument and Authorities.

This is a claim for compensation for services alleged to have been rendered by the plaintiff primarily, in procuring the employment of the late R. M. Corwine by the United States, in 1869, to conduct the defence in the "Farragut Prize Cases," then pending in the court below. The allegation is that the plaintiff had "the selection of counsel in said cases, the Treasury Department restricting him only to the selection of a man familiar with admiralty practice." Startling as this proposition seems to be, it is seriously insisted upon that such a bargain is valid. The plaintiff was not the Secretary of the Treasury at the time he undertook to dispense the patronage of an executive department of the nation. If he had been, the criticism upon an agreement to dispose of such favors for a consideration ought to be

severe. The contract based upon such a consideration cannot easily be supported. It is submitted that the contract alleged to exist here cannot be any more readily sustained. The law has been declared upon this subject, and it is that "all agreements for pecuniary considerations to control the business operations of the government, or the regular administration of justice, or the appointment to public offices, * * are void as against public policy."

The appointment mentioned was an appointment to a public office connected with the administration of justice, a position of the most delicate trust; and also, as appears from the record, of some profit. Such agreements are void.—(Norris vs. Tool Co., 2 Wall., 45; Clippinger vs. Hepbough, 5 W. & S., 315; Harris vs. Roof, 10 Barb., 489; Rose vs. Truax, 21 Barb., 361; Marshall vs. B. & O. R. R. Co., 16 How., 314.) A contract which proceeded upon such a consideration, either in whole or in part, is null and void.—(Trist vs. Child, 21 Wall., 441.)

The plaintiff called three witnesses to prove the terms of the agreement with the testator. The first one (Lovell) testified (6) that Corwine stated that "he had agreed to pay the plaintiff one-half of the fees he should receive in the said cases for his aid in getting the appointment of special counsel, *and* for the assistance plaintiff was to render in procuring testimony and giving information," &c., &c. The second one (Wells) testified that "the impression he got from his conversation with Corwine was that he (Corwine) was to pay the plaintiff one-half of the fees for getting the appointment as special counsel in the prize cases, and without reference to any other services" (7). The third witness (Russell) testified that the testator told him (in 1871) that the plaintiff was assisting him in the preparation of the defence in the Farragut case, and that "he had agreed to pay the plaintiff one-half of his fees *for his assistance*." The testimony does not differ in any material point; it establishes, if it establishes anything, that there was but one agreement and that was that the plaintiff should use his

pretended secret influence with the head of the Treasury Department to secure the employment of counsel, for which he was to receive a very large reward; the future assistance could not have been particularly valuable. His information was contained in the papers and documents belonging to the quartermaster's bureau of the War Department (7), and must have been perfectly accessible to the officers of the government. Procuring the employment was relied upon as the great service of the plaintiff. His services in the management of such cases could not have been very valuable. He was not admitted to the bar until nearly three years after the alleged contract.

The plaintiff, on the trial, offered to prove that the money specified in the discharge of July 31, 1873 (10), was paid to him by Quinton Corwine, the son of the testator, and that at the time of such payment, Quinton Corwine stated that the amount paid the plaintiff after and including that date, was one-half of all the fees which had been received by the testator in the cases mentioned; this testimony was objected to and excluded, and this constitutes the ground of one of the exceptions (10). This evidence was properly excluded. There is no evidence in the record to show that Quinton Corwine was his father's agent and that he had authority to make any such statement, or that he possessed power to bind his father in any way whatsoever touching this business. The evidence rather proves the contrary; he acted as his father's messenger only; the discharge (10) is in the handwriting of the testator, which shows that it had been prepared beforehand.

The next exception is based upon the fact that the plaintiff offered himself, and on objection was rejected, as a witness in his own behalf, for the purpose of proving that the testator "told him that the sum of $475 and $4,000 paid to him were one-half of all the fees which he had received or expected to receive in the said cases, and that the said receipt was signed and executed by the plaintiff in consequence of the said statement of the testator and in

ignorance of the fact that the testator had received the sums aforesaid which had been paid to him as fees and in ignorance of the fact that he claimed any further allowance," &c., &c.

In the first place, this was an offer of immaterial evidence; there was no offer to show at what time this conversation took place, whether it was before the payment of the $10,000 or not; nor was there an offer of any evidence tending to show that the testator was guilty of deception, falsehood, or fraud. It will not be overlooked that this discharge is dated July 31, 1873, and that the books of the treasury show that on the same day $10,000 was paid to the testator. Although the books show that this charge was made on that day, still it does not follow that the testator received the money on that day. The law requires that all moneys shall be paid by the treasury on drafts (McKnight vs. U. S., 13 Court of Claims), and this draft may have been transmitted by mail. However this may be, without a distinct offer on the part of the plaintiff to show that the discharge was procured through mistake or misapprehension, or by means of fraud or misrepresentation, the testimony was immaterial and was properly excluded. The burthen of proof was upon the plaintiff.

In the second place, it was an offer to prove, in an action against an executor, by the plaintiff himself, a statement alleged to have been made by the testator, and this kind of evidence is expressly prohibited by law.—(Revised Statutes U. S., § 858.) The limitations imposed by the act of 1865, which were incorporated with this section, as well as the section itself, have always been enforced in the courts of this District. The statute (13 Statute, 533) excluding testimony of the kind in question was an amendment to a proviso in an appropriation law (13 Stats., 351) providing funds for the expenses of punishing persons for counterfeiting the coin and currency of the United States, which was just as applicable to this District as to any other part of the Republic.

An examination of all the sections in the chapter of the Revised Statutes, of which this is the first, will show that all of them are applicable to the administration of the law in the courts of this District. The Supreme Court of the District of Columbia is undoubtedly a court "of the United States," and there is nothing conflicting or inconsistent between the terms of this section and section 876 of the Revised Statutes relating to the District of Columbia. The limitation is surely a very fair and proper one, and it is peculiarly proper in a case like this. Mr. Corwine is dead, and it is sought, by the plaintiff's own evidence, to fasten upon him the stigma of having been a party to an atrocious arrangement.

In the third place, the whole case is based upon a contract which is utterly void, and when it appears to this court that a recovery can never be supported in a cause, the judgment will not be disturbed and harmless errors will be disregarded. The plaintiff would have been no better with this proffered testimony than he was without it.—(Cooper vs. Coates, 21 Wall., p. 105; Gregg vs. Moss, 14 Wall., 564.)

The third and fourth prayers of the defendant granted by the court, which related to the settlement between the parties, correctly state the law upon the subject-matter.—(Vedder vs. Vedder, 1 Denio, 260; United States vs. Childs, 12 Wall., 242.)

The case was more favorably presented to the jury for the plaintiff, by the two prayers granted on the subject of accord and satisfaction (11), than the strict rules of law, as applied to the evidence in this case, will warrant.

The prayers of the plaintiff's counsel in reference to the two letters were properly rejected. Argument is not needed to establish this proposition.

The arbitrators, to whom were referred the prize cases in question, made their report on the 26th day of March, 1873. At that date the testimony must have been closed, and the services of the plaintiff must have been at an end. The settlement between him and Corwine was made and con-

cluded on the 31st day of July, 1873. There is not a syllable of evidence in the case and none was offered to show that this was a fraudulent settlement, and it is suggested that the unfairness about the transaction consisted in the astonishing pretence to power and exorbitant demands of the plaintiff for the services rendered by him. During most of the time of the progress of these causes he could not have been more than a mere law student, if he had ever attained that dignity. He was admitted to the bar September 23, 1872.—(19.) Forty-five hundred dollars ought to be regarded as a very high price to pay a law student for his services in such cases. There can be but little doubt that the plaintiff has already received a great deal more money from Corwine than he was justly entitled to have.

The judgment of the Supreme Court of the District of Columbia should be affirmed.

ENOCH TOTTEN,
Counsel for Defts. in Error.